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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1968**

**No. 776**

**UTAH PUBLIC SERVICE COMMISSION,**  
*Appellant*

*v.*

**EL PASO NATURAL GAS COMPANY,**  
**Et Al.**

**On Appeal From The United States District  
Court For The District Of Utah**

**PETITION OF THE PEOPLE OF THE STATE OF  
CALIFORNIA FOR REHEARING OR  
MODIFICATION OF DECISION**

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UTAH PUBLIC SERVICE COMMISSION,  
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**PETITION OF THE PEOPLE OF THE STATE OF  
CALIFORNIA FOR REHEARING OR  
MODIFICATION OF DECISION**

The People of the State of California, (California),  
intervener below and appellee herein, petition the  
Court that it grant a rehearing on or modify the  
Court's decision of June 16, 1969 which vacated the  
judgment of the District Court of Utah and remanded  
this matter for further proceedings.

## I. GROUNDS FOR PETITION

The Court's June 16 opinion is a decision on the merits of this action; however, the opinion was based upon, and rendered after, summary and limited review of one facet only of the case.

On April 21, 1969 the Court ordered oral argument eight days later on two limited questions, first, should the motion of the last remaining appellant, the State of Utah, to dismiss its appeal herein be granted, or second, should the Court hear and review the case. The June 16 decision did not decide these questions; it did not order dismissal of Utah's appeal, or hearing and review of the case. Instead, and without opportunity for briefing or argument by the parties on the merits, the Court's decision of June 16 dealt with and disposed of the action on its merits.

As a result of such partial and summary consideration, the decision contains a provision as to reallocation of gas reserves which may well cause substantial adverse effects to California, the protection of whose interests were at the heart of the Court's mandate. (June 16 decision page 3).

Since the subject of reallocation of gas reserves was not argued, orally or by briefs, nor noticed for or heard by the Court, California asks that a rehearing or modification of the Court's decision in respect to such provision be granted.

## II. REALLOCATION OF ADDITIONAL GAS RESERVES BY EL PASO NATURAL GAS COMPANY AS ORDERED WOULD PENALIZE CALIFORNIA

The Court's June 16 decision holds that the District Court's judgment does not satisfy the prior mandate of this Court; to in part accomplish compliance therewith, the decision directs that the District Court make a further allocation or reallocation of the gas reserves of El Paso Natural Gas Company (El Paso), to the end the divestee may be better equipped to be able to compete for gas sales in California.

The State of California is supplied with natural gas by three interstate pipeline systems, one of which is that of defendant and appellee El Paso. Such systems are packages consisting of three basic and integrated elements: (1) gas reserves; (2) pipeline or transportation facilities; and (3) contracts for sale of gas. To be economic packages, these elements must be proportioned to each other. To this end and as a general practice, pipeline owners acquire no more reserves than are necessary and build transportation facilities of no greater capacity than are required for their planned projects. They do not acquire, or undertake the financial burden incident to ownership of, excess or extra gas reserves beyond their needs.

California understands these principles were employed by defendant and appellee, El Paso, in the planning and development of its system which serves

California. It understands that El Paso has contracts to sell all the gas which its existing system can carry. It understands that El Paso has acquired only those quantities of gas reserves which were necessary for it to obtain Federal Power Commission certification and authority, not more. It understands that had the divestiture ordered by the District Court been consummated and the gas reserves divested been those ordered by the District Court, then El Paso would have retained only such quantity of gas reserves as were required to support and serve the system and customers which El Paso was to retain; El Paso would not have been left with nor would it have possessed reserves in excess of those needed to support its service.

The sole source of any further or additional gas reserves which the June 16 decision directs be reallocated will be from these reserves of El Paso which are already committed to California. Immediately upon divestiture by El Paso of any further reserves, California's gas-supply will be disrupted and, in the absence of interim arrangements, it will be deprived temporarily of gas reserves essential to meet its requirements.

More importantly, if, pursuant to the Court's decision, there is a reallocation and additional gas is divested, California may be subjected to a further and major loss. Such would occur were the divestee to attempt but fail in its endeavor to mount a new



California pipeline. Such failure could result from any number of causes including, for example, refusal of the Federal Power Commission to certificate and authorize such a project or inability on the part of the divestee to obtain financing therefor. In such event, the divestee could not simply continue to idly hold the reserves which had been divested to it to enable it to build a new pipeline to California; it would have no reason and could not be expected to pay the cost of holding idle reserves. To the contrary, the divestee would have incentive to make use of such reserves. The reserves which would be divested by El Paso are relatively inexpensive reserves and the existing pipeline system which is to be divested can use further reserves. In such situation the divestee could be expected to attempt to divert the additional gas divested from California to other markets. California would thereby entirely lose gas it now has and is relying upon, contrary to the manifest desire of this Court.

In light of this practical and realistic situation, and the fact that this matter was not decided after and on the basis of a hearing on the merits, California believes that a hearing on the merits should be granted to the end such adverse effects on California may be avoided or that the Court should modify its decision so as to make it specifically clear that the District Court is not to order any reallocation of further gas reserves so as to prejudice and deprive California of its present sources of gas.



### III. CONCLUSION

In light of the foregoing, California respectfully asks that the Court either grant rehearing of its June 16 decision or that it modify and amend that decision so as to avoid the unhappy and significant adverse effects described above.

DATED: July 7, 1969.

Respectfully submitted,

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of the State of California

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I hereby certify that the foregoing petition is presented in good faith and not for delay.

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